UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/711,956	10/15/2004	John E. Dinger	RSW920040065US-09	5955

44870   7590   09/17/2007

MOORE & VAN ALLEN, PLLC For IBM
P.O. Box 13706
Research Triangle Park, NC 27709

EXAMINER
REYES, MARIELA D

ART UNIT	PAPER NUMBER
2167	

MAIL DATE	DELIVERY MODE
09/17/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

	Application No.	Applicant(s)
	10/711,956	DINGER ET AL.
Office Action Summary	Examiner	Art Unit	
	Mariela D. Reyes	2167	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>10 July 2007</u>.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-32</u> is/are pending in the application.

   4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-32</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>15 October 2004</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.

   Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

   Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

   a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

   * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
   Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
   Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

This Office Action has been issued in response to the amendment filed on July

10th, 2007. Claims 1-32 are pending. Applicant's arguments have been carefully and

respectfully considered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 13, 18, 23 and 28 are rejected under 35 U.S.C. 102(b) as being

anticipated by Lawlor et al (US Patent 6,038,677).

With respect to independent claim 1, Lawlor teaches:

A method to automatically define resources forming an IT service,

comprising:

Tracking resources utilized in responding to a request or set of requests or

performing a transaction or a set of transactions; and (Column 2 Lines 46-48,

discloses finding resources that have to be related to an application)

Automatically defining resources that form an IT service by aggregating all

resources utilized to respond to all requests or to perform all transactions.

(Column 2 Lines 48-50, discloses automatically generating a resource group with the

resources necessary for the execution of a determined application)

With respect to claim 2, Lawlor teaches:

Adding any new resources utilized to a resource list. (Column 2 Lines 48-50,

discloses that the system will automatically add all resources that are needed for the

execution of an application)

With respect to claim 3, Lawlor teaches:

Removing any resource from the resource list in response to the resource

not being utilized for a predetermined time duration. (Column 5 Lines 10-13,

discloses that the constraints for adding a resource to a resource group are based on

performance, therefore if the resource is not being utilized it would be removed from the

resource group)

With respect to independent claim 13, Lawlor teaches:

A method to automatically define resources forming an IT service,

comprising:

Examining each instance of a request or transaction; and (Column 2 Lines

46-48, discloses that each request for execution of an application is analyzed to

understand what resources are used during the execution)

Maintaining a record of a union of all resources utilized in responding to each instance of a request or transaction over a selected time period or on a rolling time period basis. (Column 2 Lines 48-50, discloses that the resources that are used during the execution of an application will be made into a resource group based on a set of constraints or rules)

With respect to independent claim 18, Lawlor teaches:

A system that automatically defines resources forming an IT service, comprising:

A processor; and a resource utilization program operable on the processor, wherein the resource utilization program includes computer executable instructions to maintain a record of a union of all resources utilized in responding to each instance of a request or transaction over a selected time period or on a rolling time period basis. (Column 2 Lines 48-50, discloses that the resources that are used during the execution of an application will be made into a resource group based on a set of constraints or rules)

With respect to independent claim 23, Lawlor teaches:

A method of making a system that automatically defines resources forming an IT service, comprising:

Providing a processor; and providing a resource utilization program operable on the processor, wherein the resource utilization program includes

computer executable instructions to maintain a record of a union of all resources

utilized in responding to each instance of a request or transaction over a selected

time period or on a rolling time period basis. (Column 2 Lines 48-50, discloses that

the resources that are used during the execution of an application will be made into a

resource group based on a set of constraints or rules)

With respect to independent claim 28, Lawlor teaches:

A computer-readable medium having computer-executable instructions for

performing a method, comprising:

Tracking resources utilized in responding to a request or set of requests or

performing a transaction or a set of transactions; and (Column 2 Lines 46-48,

discloses finding resources that have to be related to an application)

Automatically defining resources that form an IT service by aggregating all

resources utilized to respond to all requests or to perform all transactions.

(Column 2 Lines 48-50, discloses automatically generating a resource group with the

resources necessary for the execution of a determined application)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

Claims 4-12, 14-17, 19-22, 24-27 and 29-32 are rejected under 35 U.S.C. 103(a)

as being unpatentable over Lawlor et al (US Patent 6,038,677) in view of Stone et al

(US Patent 7,069,558).

With respect to claim 4:

Lawlor doesn't appear to explicitly disclose **determining a percentage of**

utilization of each resource across all requests or transactions.

Stone teaches **determining a percentage of utilization of each resource**

across all requests or transactions. (Column 6 Lines 45-55, discloses determining a

resource value which is a usage percentage of a resource, this allows for controlling the

execution of applications on said resource)

It would be obvious for someone with ordinary skill in the art at the time of the

invention to combine the teachings of the cited references to implement **determining a**

percentage of utilization of each resource across all requests or transactions

because this allows for controlling the execution of applications on said resource.

With respect to claim 5:

Lawlor doesn't appear to explicitly disclose **automatically assigning a priority**

to each resource according to the percentage of utilization of the resource.

Stone teaches **automatically assigning a priority to each resource according**

to the percentage of utilization of the resource. (Fig. 11, discloses assigning priority

to resources based on the percentage)

With respect to claim 6:

Lawlor doesn't appear to explicitly disclose **presenting a resource list and an associated priority for each resource to a user or requestor.**

Stone teaches **presenting a resource list and an associated priority for each resource to a user or requestor.** (Fig. 6, discloses presenting a list with the resources and their usage percentage)

With respect to claim 7:

Lawlor doesn't appear to explicitly disclose **adjusting a status propagation logic based on the priority assigned to each resource.**

Stone teaches **adjusting a status propagation logic based on the priority assigned to each resource.** (Fig. 11, discloses that if the percentage of usage exceeds a determined percentage then the status of the resource will be changed)

With respect to claim 8:

Lawlor doesn't appear to explicitly disclose **presenting a resource utilization diagram to a user or requestor.**

Stone teaches **presenting a resource utilization diagram to a user or requestor.** (Fig. 6, discloses presenting a resource utilization diagram in a user interface)

With respect to claim 9:

Lawlor doesn't appear to explicitly disclose **representing a percentage of utilization of each resource in the resource utilization diagram.**

Stone teaches **representing a percentage of utilization of each resource in the resource utilization diagram.** (Column 6 Lines 45-55, discloses determining a resource value which is a usage percentage of a resource, this allows for controlling the execution of applications on said resource)

With respect to claim 10:

Lawlor doesn't appear to explicitly disclose **representing a priority of each resource in the resource utilization diagram, wherein the priority is automatically assigned according to the percentage of utilization of the resource.**

Stone teaches **representing a priority of each resource in the resource utilization diagram, wherein the priority is automatically assigned according to the percentage of utilization of the resource.** (Fig. 11, discloses assigning priority to resources based on the percentage)

With respect to claim 11:

Lawlor doesn't appear to explicitly disclose **representing a quantity of occurrences of each segment linking resources in the resource utilization diagram.**

Stone teaches **representing a quantity of occurrences of each segment linking resources in the resource utilization diagram.** (Fig. 11, discloses presenting the percentage of usage of each resource)

With respect to claim 12:

Lawlor doesn't appear to explicitly disclose **representing a time duration since each resource was last utilized in the resource utilization diagram.**

Stone teaches **representing a time duration since each resource was last utilized in the resource utilization diagram.** (Fig. 11, discloses teaching the time duration of each resource in the application)

With respect to claim 14:

Lawlor doesn't appear to explicitly disclose **determining a percentage of utilization of each resource across all requests or transactions.**

Stone teaches **determining a percentage of utilization of each resource across all requests or transactions.** (Column 6 Lines 45-55, discloses determining a resource value which is a usage percentage of a resource, this allows for controlling the execution of applications on said resource)

With respect to claim 15:

Lawlor doesn't appear to explicitly disclose **automatically assigning a priority to each resource according to the percentage of utilization of the resource.**

Stone teaches **automatically assigning a priority to each resource according to the percentage of utilization of the resource.** (Fig. 11, discloses assigning priority to resources based on the percentage)

With respect to claim 16:

Lawlor doesn't appear to explicitly disclose **adjusting a status propagation logic based on the priority assigned to each resource.**

Stone teaches **adjusting a status propagation logic based on the priority assigned to each resource.** (Fig. 11, discloses that if the percentage of usage exceeds a determined percentage then the status of the resource will be changed)

With respect to claim 17:

Lawlor doesn't appear to explicitly disclose **presenting a resource utilization diagram to a user or requestor.**

Stone teaches **presenting a resource utilization diagram to a user or requestor.** (Fig. 6, discloses presenting a resource utilization diagram in a user interface)

With respect to claim 19:

Lawlor doesn't appear to explicitly disclose **the resource utilization program comprises computer executable instructions to determine a percentage of utilization of each resource across all request or transactions.**

With respect to claim 20:

Lawlor doesn't appear to explicitly disclose **the resource utilization program**

comprises computer executable instructions to automatically assign a priority to

each resource according to the percentage of utilization of the resource.

Stone teaches **the resource utilization program comprises computer**

executable instructions to automatically assign a priority to each resource

according to the percentage of utilization of the resource. (Fig. 11, discloses

assigning priority to resources based on the percentage)

With respect to claim 21:

Lawlor doesn't appear to explicitly disclose **the resource utilization program**

comprises computer executable instructions to adjust a status propagation logic

based on the priority assigned to each resource.

Stone teaches **the resource utilization program comprises computer**

executable instructions to adjust a status propagation logic based on the priority

assigned to each resource. (Fig. 11, discloses that if the percentage of usage

exceeds a determined percentage then the status of the resource will be changed)

With respect to claim 22:

Lawlor doesn't appear to explicitly disclose **the resource utilization program comprises executable instruction to present a resource utilization diagram to a user or requestor.**

Stone teaches **the resource utilization program comprises executable instruction to present a resource utilization diagram to a user or requestor.** (Fig. 6, discloses presenting a resource utilization diagram in a user interface)

With respect to claim 24:

Lawlor doesn't appear to explicitly disclose **providing computer executable instructions to determine a percentage of utilization of each resource across all request or transactions.**

Stone teaches **providing computer executable instructions to determine a percentage of utilization of each resource across all request or transactions.** (Column 6 Lines 45-55, discloses determining a resource value which is a usage percentage of a resource, this allows for controlling the execution of applications on said resource)

With respect to claim 25:

Lawlor doesn't appear to explicitly disclose **providing computer executable instructions to automatically assign a priority to each resource according to the percentage of utilization of the resource.**

Stone teaches **providing computer executable instructions to automatically assign a priority to each resource according to the percentage of utilization of the resource.** (Fig. 11, discloses assigning priority to resources based on the percentage)

With respect to claim 26:

Lawlor doesn't appear to explicitly disclose **providing computer executable instructions to adjust a status propagation logic based on the priority assigned to each resource.**

Stone teaches **providing computer executable instructions to adjust a status propagation logic based on the priority assigned to each resource.** (Fig. 11, discloses that if the percentage of usage exceeds a determined percentage then the status of the resource will be changed)

With respect to claim 27:

Lawlor doesn't appear to explicitly disclose **providing computer executable instructions to present a resource utilization diagram to a user or requestor.**

Stone teaches **providing computer executable instructions to present a resource utilization diagram to a user or requestor.** (Fig. 6, discloses presenting a resource utilization diagram in a user interface)

With respect to claim 29:

Lawlor doesn't appear to explicitly disclose **automatically assigning a priority to each resource according to the percentage of utilization of the resource.**

Stone teaches **automatically assigning a priority to each resource according to the percentage of utilization of the resource.** (Column 6 Lines 45-55, discloses determining a resource value which is a usage percentage of a resource, this allows for controlling the execution of applications on said resource)

With respect to claim 30:

Lawlor doesn't appear to explicitly disclose **presenting a resource list and an associated priority for each resource to a user or requestor.**

Stone teaches **presenting a resource list and an associated priority for each resource to a user or requestor.** (Fig. 11, discloses assigning priority to resources based on the percentage)

With respect to claim 31:

Lawlor doesn't appear to explicitly disclose **adjusting a status propagation logic based on the priority assigned to each resource.**

Stone teaches **adjusting a status propagation logic based on the priority assigned to each resource.** (Fig. 11, discloses that if the percentage of usage exceeds a determined percentage then the status of the resource will be changed)

With respect to claim 32:

Lawlor doesn't appear to explicitly disclose **presenting a resource utilization diagram to a user or requestor.**

Stone teaches **presenting a resource utilization diagram to a user or requestor.** (Fig. 6, discloses presenting a resource utilization diagram in a user interface)

Response to Arguments

Claim Objections

In light of the instant amendments to the objected claims the objections have been withdrawn.

Claim Rejections 35 USC 101

In light of the instant amendments to the claims 28-32, the 35 USC 101 rejection has been withdrawn.

Claim Rejections 35 USC 112

In light of the instant amendments to the claims 16 and 18, the 35 USC 112 rejection has been withdrawn.

Claim Rejections 35 USC 102

Applicant's arguments have been fully considered but are not persuasive.

With respect to claim 1:

Applicant states **"Lawlor does not disclose tracking resources utilized in responding to a request or set of requests or performing a transaction or a set of transactions"** Examiner respectfully disagrees. Lawlor discloses (Column 2 Lines 46-50) that an administrator identifies resources that must be collocated with a given application in the event of a failure of a computer on which the application is then executing. The administrator will identify (track) resources needed to execute a specific application. The execution of this application is the result of transactions that request the use of that resource.

Applicant also states **"Lawlor does not disclose or suggest the tracking of resources *that have been* utilized"** Examiner points out that the claim as presented does not use the above presented wording rather it states **"...tracking resources utilized..."** This clearly changes the scope of the claim because tracking of resources that have been utilized will be interpreted as the resources have already been used and that a history of that usage has been kept. However tracking resources utilized will be interpreted as tracking the resources that are or will be used in response to a request. Lawlor clearly discloses that the administrator will identify resources that are used to fulfill a transaction.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "maintaining the record of resources utilized in responding over a selected time period or on a rolling time period basis") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the

specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mariela D. Reyes whose telephone number is (571) 270-1006. The examiner can normally be reached on M - F 7:30- 5:00 East time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Cottingham can be reached on (571) 272-7079. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.   -

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MR Sept 05, 2007

MR

DL

JOHN COTTINGHAM
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100